Supreme Court, U.S.
FILED

95 • 218 SEP 6 - 1994

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

DAVID A. NOBERS, *et al.*,

Petitioners,

vs.

CRUCIBLE, INC., *et al.*,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

GREGORY GLEASON
Counsel of Record
Attorney for Petitioners
519 Court Place
Pittsburgh, Pennsylvania 15219
(412) 391-6920

7039
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

34 pp

QUESTION PRESENTED

Are Petitioners/Plaintiffs state law claims for breach of express and implied contracts of employment so related to an employee benefit plan as to be pre-empted by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (hereinafter "ERISA") even though no plan is a party to the action, no plan will provide relief to the Petitioners/Plaintiffs and solely because the complaint alleges that the breach of the contract of employment resulted in damages equal to pension benefits that would have been received by the Petitioners/Plaintiffs had the Respondents/Defendants not breached the contracts of employment pleaded in the complaint?

LIST OF PARTIES

The Petitioners are David A. Nobers, Robert R. Campbell, Gasper P. Porto, and Gary T. Weekley, individuals, and all other similarly situated, a class of all former supervisors of Crucible, Inc. who had been promoted from classifications represented by the United Steelworkers of America and who at the time of layoff and/or termination were not returned to the bargaining unit from which promoted.

The Respondents are Crucible, Inc. and Colt Industries, Inc. Crucible, Inc. was the employer of the Petitioners at all times relevant to the claims for breach of contract and at those times was a wholly owned subsidiary Colt Industries, Inc. Coltec Industries, Inc. is the successor of Colt Industries, Inc.

TABLE OF CONTENTS

	Page
Question Presented	i
List of Parties	ii
Table of Contents	iii
Table of Citations	iii
Opinion Below	1
Statement of Jurisdiction	2
Relevant Statute Involved	2
Statement of the Case	2
Reasons for Granting the Writ	3
Conclusion	4

TABLE OF CITATIONS

Cases Cited:

Ingersoll-Rand v. McClendon, 498 U.S. 133 (1990)	2, 3
1975 Salaried Plan v. Nobers, et al., 968 F.2d 401 (3rd Cir. 1992)	3

Contents

Page

Statutes Cited:

28 U.S.C. § 1257 2

29 U.S.C. § 1001, *et seq.* i

29 U.S.C. § 1132(a) 4

29 U.S.C. § 1144 2

APPENDIX

Appendix A — Letter Dated June 7, 1994 from Irma T. Gardner, Deputy Prothonotary of the Supreme Court of Pennsylvania Denying Petition for Allowance of Appeal 1a

Appendix B — Judgment of the Superior Court of Pennsylvania, Pittsburgh District Dated January 19, 1994 ..... 3a

Appendix C — Opinion of the Superior Court of Pennsylvania Filed January 19, 1994 ..... 4a

Appendix D — Memorandum Opinion of the Court of Common Pleas of Beaver County, Pennsylvania 15a

No.

In The

Supreme Court of the United States

October Term, 1995

DAVID A. NOBERS, *et al.*,

Petitioners,

vs.

CRUCIBLE, INC., *et al.*,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

This petition for writ of certiorari is from the order of the Supreme Court of Pennsylvania, dated June 7, 1994 denying the petition for allowance of appeal from the order of the Superior Court of Pennsylvania filed January 19, 1994, at No. 452 Pittsburgh 1993, which affirmed the decision of the Court of Common Pleas of Beaver County, Pennsylvania entered February 16, 1993 at No. 843 of 1984. These are unreported decisions.

STATEMENT OF JURISDICTION

This Court has jurisdiction of this petition pursuant to 28 U.S.C. § 1257.

RELEVANT STATUTE INVOLVED

ERISA § 514(a):

> Except as provided in subsection (b) of this section [which is not relevant to this petition], the provisions of this title . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . . 29 U.S.C. § 1144.

STATEMENT OF THE CASE

On June 28, 1994, the Petitioners herein filed a class action complaint in the Court of Common Pleas of Beaver County, Pennsylvania, *Nobers, et al. v. Crucible, Inc., et al.*, No. 843 of 1984, on behalf of all supervisory and managerial employees of Crucible, Inc. who had been employed by Crucible for at least twenty years and who had been promoted from bargaining units represented by the United Steelworkers of America and had been laid off from their supervisory and managerial positions without being returned to the bargaining unit from which promoted. The petitioners complain that this is a breach of contract.

After lengthy procedural conflict, including two removals to federal court and two remands to state court, the Court of Common Pleas of Beaver County granted the Respondents' motion for judgment on the pleadings in reliance on *Ingersoll-Rand v. McClendon*, 498 U.S. 133 (1990) to find that the claims were pre-empted by ERISA.

The Superior Court affirmed the decision of the Court of Common Pleas, in part relying on *1975 Salaried Plan v. Nobers, et al.*, 968 F.2d 401 (3rd Cir. 1992), as well as *Ingersoll-Rand v. McClendon, supra.*

In essence the Pennsylvania courts found that the claims of the petitioners were "related" to a benefit plan because the petitioners claimed damages which would have been calculated by the difference between the amount of pension received as supervisors and the amount that would have been received had the Petitioners been returned to the bargaining from which promoted.

REASONS FOR GRANTING THE WRIT

The Pennsylvania courts held that the pre-emption question presented by this case was not resolved until *Ingersoll-Rand v. McClendon, supra.* But in contrast with the plaintiff in that case who filed a wrongful discharge action and alleged that he was fired to prevent him from attaining certain pension benefits, and who would not have had a cause of action but for the existence of a pension plan, the instant matter does not depend upon the existence of pension benefits to establish liability. Liability in the instant matter depends upon the existence of a contract, which existence is in dispute and which is purely a matter of state law.

There is no analysis under ERISA which will determine the liability of these defendants to these plaintiffs. The complaint alleges that as a result of a breach of contract the plaintiffs have suffered damages. The instant matter is similar to the claim an employee would have if his employer had promised a pension plan and not created a pension plan. The pre-emptive effect of ERISA has been mistakenly read to pre-empt a garden variety breach of contract claim. If the Third Circuit and the Pennsylvania courts are correct, any dispute concerning a

contract of employment will be pre-empted by ERISA, even if as here the plaintiffs are not participants or beneficiaries entitled to seek civil enforcement. *See* ERISA § 502(a) which provides that only participants or beneficiaries may seek civil enforcement of ERISA. 29 U.S.C. § 1132(a).

CONCLUSION

For all the foregoing reasons this petition should be granted so that this Court can resolve the scope of ERISA's pre-emption of state law claims that do not reach benefit plans nor depend upon the existence of a benefit plan to establish liability

Respectfully submitted,

GREGORY GLEASON
Counsel of Record
Attorney for Petitioners
519 Court Place
Pittsburgh, Pennsylvania 15219
(412) 391-6920

EXHIBIT A—LETTER DATED JUNE 7, 1994 FROM IRMA T. GARDNER, DEPUTY PROTHONOTARY OF THE SUPREME COURT OF PENNSYLVANIA DENYING PETITION FOR ALLOWANCE OF APPEAL

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Charles W. Johns, Esquire
Pronothonotary

801 City-County Building
Pittsburgh, PA
15219-2463
(412) 565-2816

Irma T. Garner
Deputy Pronothonarty

June 7, 1994

Gregory Gleason, Esquire
1666 Gateway Two
Pittsburgh, PA 15222

In Re: David A. Nobers, et al. v. Crucible, Inc. etc., et al.
No. 0084 W. D. Allocatur Docket 1994

Dear Mr. Gleason:

Enclosed is a certified copy of the Order dated June 7, 1994, denying your Petition for Allowance of Appeal.

Very truly yours,

Irma T. Gardner
DEPUTY PROTHONOTARY

Appendix A

ITG:abg
cc: William H. Powderly, III, Esquire
Hon. Joseph S. Walko

APPENDIX B—JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA, PITTSBURGH DISTRICT DATED JANUARY 19, 1994

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

NO. 452 PITTSBURGH, 1993

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPTER P. PORTO, and GARY T. WEEKLEY, INDIVIDUALLY AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

APPELLANTS

VS

CRUCIBLE, INC., A CORPORATION, and COLT INDUSTRIES, INC., A CORPORATION

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court that the judgment of the Court of Common Pleas of Beaver County be, and the same is hereby affirmed.

BY THE COURT;

s/ Eleanor R. Valecho
DEPUTY PROTHONOTARY

DATED; January 19, 1994

APPENDIX C — OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA FILED JANUARY 19, 1994

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 452 PITTSBURGH 1993

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPER P. PORTO, and GARY T. WEEKLEY, INDIVIDUALLY AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Appellants

v.

CRUCIBLE, INC., A CORPORATION, and COLT INDUSTRIES, INC., A CORPORATION

Appeal from the Order Entered February 16, 1993, in the Court of Common Pleas, Civil Division, of Beaver County, No. 843 of 1984.

BEFORE: ROWLEY, P.J., and TAMILIA and JOHNSON, JJ.

OPINION BY ROWLEY, P.J.; FILED: January 19, 1994

Are the claims stated by plaintiffs/appellants David A. Nobers et al., former employees of appellee Crucible, Inc. ("Crucible"), at its Midland, Pennsylvania, plant, [1] in their action for breach of an employment contract against Crucible and its parent company, appellee Colt Industries, Inc. ("Colt"), so related to an employee benefit plan as to be pre-empted by the

1. Crucible is now Colt Industries Operating Corporation.

Appendix C

Employee retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq.? Concluding that they were so related, and that the courts of this Commonwealth therefore lacked subject matter jurisdiction over appellants' action, the trial court, in an order entered February 16, 1993, granted judgment on the pleadings in favor of appellees. This timely appeal followed. For the reasons set forth below, we conclude that the trial court's resolution of this, appellants' sole issue, was correct. Accordingly, we affirm the order granting appellees' motion for judgment on the pleadings.

At the heart of appellants' action is the claim that when they were promoted from unionized positions to non-union managerial or supervisory positions at the Midland plant, they were promised, orally or impliedly, that if laid off they would have the right to return to their collective bargaining unit or to be treated as a member of the bargaining unit on layoff status. During the course of Crucible's closing of the Midland plant, all of the named appellants were laid off or discharged, and none was permitted to return to the bargaining unit or to maintain laid-off status in the unit. Appellants contend that this alleged breach of an oral or implied agreement deprived them of greater unemployment, pension, and insurance benefits than they are entitled to receive as salaried, non-union employees.

The procedural history of this case, which is both lengthy and complicated is summarized in the trial court's opinion of February 16, 1993, and we will mention only so much of that history as is essential to an understanding of this appeal. Appellants first attempted to bring an action in federal court, with jurisdiction premised on ERISA, the federal Labor Management Relations Act, and the federal Declaratory Judgment Act. When that action (*"Nobers I"*) was eventually dismissed, appellants

filed the present action (*"Nobers II"*) in the Court of Common Pleas of Beaver County, stating common law breach of contract claims and requesting class certification. Appellees' attempt to have the case removed to federal court proved unavailing, as did the action for injunctive relief which appellees filed in federal court to have the present action barred on grounds of res judicata.

At the same time as the filing of their ultimately unsuccessful federal action, appellees filed preliminary objections in the nature of a demurrer in the Court of Common Pleas of Beaver County, contending that appellants' action was barred by the doctrine of res judicata. They followed this with amended preliminary objections in which they asserted, as an additional basis for dismissal of the complaint, that the parties had stipulated that appellants' action against Colt was for Colt's alleged tortious interference with Crucible's contractual relationship with appellants. This common law claim of tortious interference, they argued, was solely cognizable under Section 510 of ERISA, and appellants' action was therefore pre-empted by Section 514 of ERISA and subject to dismissal for that reason.

Section 514(a) of ERISA states in pertinent part that the statute's provisions "shall supersede any and all State laws insofar as they may now or hereafter *relate to* any [ERISA-covered] employee benefit plan. . . ." 29 U.S.C. § 1144(a) (emphasis added). The trial court concluded that "[b]ecause [appellants'] claim for damages goes directly to the establishment of a benefit plan [appellants'] claim does 'relate to' an employee benefit plan, therefore, it is pre-empted by ERISA and we are . . . without jurisdiction to entertain the matters raised" (Trial Court Opinion, 8/7/87, at 7). Accordingly, in an order entered August 7,1987, the trial court granted appellees' preliminary objections as to jurisdiction and dismissed the action.

Appendix C

Appellants appealed to this Court. In a decision filed July 25, 1988, this Court reversed. *Nobers v. Crucible, Inc.*, 376 Pa. Super. 156, 545, A.2d 367 (1988), *alloc. denied*, 522 Pa. 578, 559 A.2d 39 (1989). Relying on its earlier opinion in *Shaw v. Westinghouse Electric Corporation*, 276 Pa. Super. 220, 419 A.2d 175 (1980), this Court concluded that the issue was whether appellees were liable for breach of an employment contract; that the factfinder's resolution of this issue would affect only the rights and liabilities of the plaintiffs and the corporate defendants, not those of the plaintiffs and the employee benefits plans; and finally that "[t]he association between the suit and the plans being tangential at best, we fail to see how ERISA is any more than incidentally involved, a factor which counsels against us concluding that the plaintiffs' claim is pre-empted by ERISA." *Id.* at 165, 545 A.2d at 371. For those reasons, this Court reversed the trial court's order granting appellees' preliminary objections and dismissing appellants' action. After our Supreme Court denied allocatur, appellees attempted for the second time to remove the case to federal district court, but were again unsuccessful.

On November 20, 1992, appellees moved for judgment on the pleadings, asserting once again that appellants' claims were pre-empted by ERISA and that subject matter jurisdiction over them therefore lay exclusively with the federal courts. Because the lack of subject matter jurisdiction may be raised at any time, Pa. R.C.P. 1032(2); *Encelewski v. Associated-East Mortgage Company*, 262 Pa. Super. 205, 210, 396 A.2d 717, 719 (1978), appellees were not barred from raising the issue a second time. In support of their argument, they cited two decisions, *Ingersoll-Rand Company v. McClendon*, 498 U.S. 133, 111 S. Ct. 478, 112 L. Ed. 2d 474 (1990) ("*Ingersoll-Rand*"), and *1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. v. Nobers*, 968 F.2d 401 (3d Cir. 1992), *cert. denied*, ___U.S.___,

113 S. Ct. 1066, 122 L. Ed. 2d 370 (1993) ("*Retirement Plan*"), that had not yet been handed down when this Court reached its earlier decision in the present case. The trial court, for reasons that are carefully explained in its opinion of February 16,1993, agreed with appellees that these intervening decisions were controlling and, accordingly, granted appellees' motion for judgment on the pleadings. It is this decision that appellants have asked us to review.

In an appeal from an order entering judgment on the pleadings, our scope of review is plenary, and we are required to determine whether "the [trial court's] action . . . was based on a clear error of law or whether there were facts disclosed by the pleadings which should properly go to the jury." *Kosor v. Harleysville Mutual Insurance Company*, 407 Pa. Super. 68, 72, 595 A.2d 128, 129-30 (1991). Appellants contend that because there are legally significant distinctions between *Ingersoll-Rand* and *Retirement Plan*, on the one hand, and the present case, on the other hand, the former decisions do not control the outcome of the latter. They maintain that this Court's earlier opinion in this action remains the law of the case and must be reaffirmed.

To evaluate appellants' claims, we turn to the cited cases. The issue before the United States Supreme Court in *Ingersoll-Rand* was whether ERISA "pre-empts a state common law claim that an employee was unlawfully discharged to prevent his attainment of benefits under a plan covered by ERISA." *Id.* at 481. Noting that the pre-emption clause of Section 514(a) is conspicuously broad, the Court stated that "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has connection with or reference to such a plain," *id.* at 483 [quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97, 103 S. Ct. 2890, 2900, 77 L. Ed. 2d 490 (1983)]. Applying this definition, the Court concluded that:

> the cause of action which the Texas Supreme Court recognized here — a claim that the employer wrongfully terminated plaintiff primarily because of the employer's desire to avoid contributing to or paying benefits under the employee's pension fund — "relate[s] to" an ERISA-covered plan within the meaning of § 514(a), and is therefore pre-empted.

Id.

Appellants assert that *Ingersoll-Rand* is inapposite because the liability of the defendants in that case depended upon the existence of a benefits plan, while in the present case "liability turns upon the existence of a contract of employment and whether or not the Appellees breached that contract" (Brief for Appellants at 10). Regardless of whether a benefits plan existed, appellants argue, they would have had a cause of action under state law. To support their contention that the pre-emptive effect of ERISA does not extend to a case such as theirs, appellants cite *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 107 S. Ct. 2211, 96 L. Ed. 2d 1 (1987), for the proposition that "only state laws that relate to benefit plans are preempted" (Brief for Appellants at 11).

Our interpretation of *Ingersoll-Rand* is guided by that of the Third Circuit Court of Appeals in *Retirement Plan.* The plaintiffs/appellants in that case were five benefit plans for Crucible employees. They went to federal court seeking a declaratory judgment concerning their obligations to defendants/appellees, who are also the named plaintiffs in the present action (i.e., *Nobers II*), as well as an injunction barring defendants/appellees from proceeding with the present action. Relief of that type is barred by the federal Anti-Injunction Act unless the request falls

under one of three exceptions, one of which is "where necessary in aid of [the federal court's] jurisdiction," 28 U.S.C. § 2283(a)(2). In considering whether the requested injunction fell within that exception, the Third Circuit Court of Appeals concluded that:

> the claim in *Nobers II* depends on the existence of an ERISA plan. If an ERISA plan did not exist, the appellees would never have brought *Nobers II*. Furthermore, the trial court's inquiry in *Nobers II* would be directed to ERISA plans, in that the calculation of damages would involve construction of ERISA plans. . . . The appellees place great emphasis on the fact that *Nobers II* is a suit against an employer, not ERISA plans or their administrators. But that defense is unavailing after *Ingersoll-Rand,* which concluded that ERISA preempted a suit against an employer.
>
> In sum, *Nobers II* "relates to" an ERISA plan and is accordingly preempted by ERISA section 514(a), 29 U.S.C. § 1144(a). Moreover, . . . even if *Nobers II* had been properly brought under ERISA, federal jurisdiction over the appellees' claim would have been exclusive.

Id. at 406-7 (footnotes omitted). The Court of Appeals also noted that *Fort Halifax Packing,* relied upon by appellants in the case before us, was easily distinguishable because the Maine severance pay statute at issue in that case did not "relate to" employee benefit plans, whereas in the case before the Court "a

plan most certainly exists, and the appellees measure their damages in *Nobers II* by reference to that plan." *Id.* at 406 n.2. Nevertheless, because plaintiffs/appellants had failed to show "that an injunction of *Nobers II* is necessary in aid of the district court's jurisdiction over the very case before it: the plans' declaratory judgment action," *id.* at 408, the Court of Appeals concluded that an injunction did not lie under § 2283(a)(2).[2] The Court of Appeals summarized its decision as follows:

> In sum, the Pennsylvania court's assumption of jurisdiction over *Nobers II* is in violation of ERISA's supersedure provisions, but an injunction does not lie simply because of that fact. Instead, we must assume that the state courts will faithfully follow federal law. On that score, we note that the preemption issue here was not definitively resolved until *Ingersoll-Rand,* which was decided *after* the Pennsylvania Superior Court had ruled that *Nobers II* was not preempted. Perhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding. If not, then the proper avenue of redress is appeal through the state court system, and ultimately, if necessary, to the United States Supreme Court.

Id. at 408 (emphasis in original; citation omitted).

The Third Circuit's opinion in *Retirement Plan*, if we choose to apply the conclusions reached therein, disposes of appellants'

2. The Court of Appeals reached the same result with regard to the remaining two exceptions to the Anti-Injunction Act.

challenge to the trial court's ruling in the case before us. Appellants contend that the Third Circuit was not presented with, and did not need to decide, the pre-emption issue and that the Third Circuit's "analysis of this [i.e., the present] case, at some distance, cannot be dispositive of the issues in this matter" (Brief for Appellant at 9).

We disagree. As the Third Circuit explained:

> The plans contend that the subject matter of *Nobers II* is, under ERISA section 502(e)(1), 29 U.S.C. § 1182(e)(1), subject to exclusive federal jurisdiction, and therefore the requested injunction falls under the second exception to the Anti-Injunction Act because it is necessary in aid of the district court's (exclusive) jurisdiction over claims of this sort. We must first determine whether federal courts have exclusive jurisdiction over the claims in *Nobers II;* if so, we must then determine whether, as the plans claim, that is sufficient to invoke the "necessary in aid of its jurisdiction" exception.

Id. at 405-6 (emphasis added). The Third Circuit's explanation indicates that the pre-emption question was an integral part of its analysis of the issue before it.

Moreover, as the trial court points out, where the Third Circuit has spoken on a federal question, the ultimate answer to which has not yet been provided by the United States Supreme Court, it is appropriate that we follow the Third Circuit's decision. To do otherwise would suggest that a disappointed litigant

> need only . . . "walk across the street" to gain a different result. Such an unfortunate situation would cause disrespect for the law. . . . Finality of judgments would become illusory, disposition of litigation prolonged for years, the business of the courts unnecessarily clogged, and justice intolerably delayed and frequently denied.

Commonwealth v. Negri, 419 Pa. 117, 122, 213 A.2d 670, 672 (1965).[3]

Finally, we agree with the Third Circuit that the present action "relates to" an ERISA plan and in fact would not have been brought but for the existence of such a plan. In their complaint appellants allege the following damages: 1) lost supplemental unemployment benefits as calculated in the Supplemental Unemployment Benefit Plan attached as Exhibit A, which sets forth plan participants' rights and protections under ERISA; 2) lost immediate pension benefits and lost pension benefits in the event of a plant closing, both of which are described in Exhibit B, a pension agreement that is "a defined benefit plan under [ERISA]" (Exhibit B at 2); and 3) lost insurance benefits as described in Exhibit C, a program of insurance benefits that is "a welfare benefit plan as defined by ERISA" (Exhibit C at 1). From the stipulation of facts that is signed by counsel for both parties and attached to appellees' amendment to their preliminary objections, we learn that

> Counsel [for plaintiffs/appellants] . . . agreed

---

3. Although *Commonwealth v. Negri* is, as we read it, a plurality opinion, the proposition cited here was supported by a majority of the Court.

> that the action against Colt, due to Colt's status as sole shareholder of [Crucible], was for tortious interference by causing [Crucible] to discharge Plaintiffs rather than enabling them to obtain various pension and welfare plan benefits by reason of being returned to the bargaining unit.

Stipulation of Facts at 7 (emphasis added). In *Jacques v. Akzo International Salt, Inc.*, ___Pa. Super.___, 619 A.2d 748 (1993), this Court, citing *Ingersoll-Rand*, held that a claim of wrongful discharge in order to deprive the employee of pension benefits was pre-empted by ERISA. Such a claim is similar to that stated by appellants in the case before us.

We conclude, therefore, that there was neither an error of law by the trial court nor facts disclosed by the pleadings which should be allowed to go to a jury. Accordingly, we affirm the order granting judgment on the pleadings to appellees.

Order affirmed.

APPENDIX D — MEMORANDUM OPINION OF THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

Civil Division

NO. 843 of 1984

DAVID A. NOBERS, ROBERT R. CAMPBELL, JR., GASPER P. PORTO, and GARY T. WEEKLEY, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CRUCIBLE, INC., a corporation and COLT INDUSTRIES, INC.,a corporation,

Defendants.

MEMORANDUM OPINION

WALKO, J. February 16, 1993

Presently before the Court is the motion for judgment on the pleadings filed on behalf of Defendants Crucible, Inc. and Colt Industries, Inc. in this action for tortious interference with the contractual relationship between Defendant Colt Industries Operating Corporation (CIOC) (formerly Crucible, Inc.) and the Plaintiffs. The motion is founded on the issue that this court lacks the requisite subject matter jurisdiction over this controversy.

The issue of subject matter jurisdiction in this controversy

was previously before this court in 1987. At that time, we granted the Defendants' motion for summary judgment believing any state claims were preempted by the applicability of the Employee Retirement and Income Security Act ("ERISA"), 29 U.S.C. SEC. 1001.An appeal ensued and that order was reversed by the superior court. However, that court did not have the benefit of a 1992 Third circuit opinion nor the 1990 United States Supreme Court decision authored by Justice O'Connor which we believe to be dispositive of the jurisdictional question in this matter.

It is with the above introduction that we digress and review the pertinent and lengthy procedural history of this case after first providing a factual synopsis.

The Plaintiffs are former employees of the Defendants at a steel plant in Midland, Pennsylvania. These employees were originally all members of a collective bargaining unit who were later promotoed to supervisory positions at Crucible.

The crux of the complaint against the Defendants is that these individuals were allegedly promised upon promotion that they had a right to return to the bargaining unit at the time of layoff or to be treated as a member of the bargaining unit on layoff status.

the Plaintiffs claim a breach of an oral agreement or implied contract, as these workers were eventually discharged or laid-off as salaried employees and were not permitted to return to the bargaining unit from which they had received their promotion nor were they allowed to maintain laid-off status in that unit.

As a result, according to the complaint, the Plaintiffs sustained damages in the forms of lost severance benefits, lost

pension benefits and lost insurance benefits, inter alia. Plaintiffs also allege that Colt instructed CIOC not to return Plaintiffs to their bargaining unit status when the Midland plant closed on October 31, 1982 to avoid the cost of benefits applicable to bargaining unit employees.

The first action, now referred to or known as "Nobers I," commenced on September 3,1982, when the Plaintiffs filed a complaint in the U.S. District Court for the Western District of Pennsylvania against Colt Industries, Inc.; Crucible, Inc., now Colt Industries Operating Corporation, (CIOC); the United Steelworkers of America, International Union; United Steelworkers of America, Local Union 1212, 3177, 5047; and Mellon Bank, N.A.

Jurisdiction was premised on the Labor Management Relations Act (LMRA), 29 U.S.C.Sec. 185; Employee Retirement Income Security Act (ERISA), 29 U.S.C.Sec. 1001 et seq., and the Federal Declaratory Judgment Act, 28 U.S.C. Sec. 2201.

On November 12, 1982, the United Steelworkers of America and the affiliated local unions filed motions to dismiss, or in the alternative, motions for summary judgment. On November 18, 1982, the same motions were also filed by Colt, CIOC and Mellon Bank.

In his order dated December 10, 1982, Judge Zeigler granted Plaintiffs leave to file an Amended Complaint, dismissed the ERISA claim for failure to join proper Defendants and failure to exhaust administrative remedies, but certified the class pursuant to Federal Rule of Civil Procedure 23. Additionally, the Defendants' motion for summary judgment was granted as it was

determined that the Plaintiffs possessed neither an express or implied right to be terminated as union employees. The Court of Appeals for the Third Circuit affirmed without opinion, 722 F.2d 733 (3d Cir. 1983).

Having had their claims dismissed in the federal court, the Plaintiffs then commenced the instant litigation. This action, known as "Nobers II," is predicated upon common law breach of contract claims.

In response to Plainatiffs' complaint, on July 26,1984, Colt and CIOC filed a petition for removal based on diversity of citizenship and ancillary jurisdiction over the state court complaint because of the district court's previous ruling.

However, the district court determined that neither ancillary or diversity jurisdiction were present and thus federal jurisdictionwas unavailable. *Nobers v. Crucible, Inc.*, 602 F. Supp. 703 (w.D. Pa. 1985). The case was then remanded to this court.

However, prior to the Defendants' motion for summary judgment being presented in this court, Colt and Crucible instituted suit in federal court, asserting that the doctrine of res judicata prevented the Plaintiffs from going forward with the action in state court. The request was denied by the district court and the complaint was dismissed. On March 6, 1986, this decision was affirmed by the Third Circuit without opinion. *Colt Industries v. Nobers*, 787 F.2d 581 (3d Cir. 1986).

Following that trip to the federal court, this Court then granted the Defendants' motion for summary judgment on the basis of lack of jurisdiction. Our belief was that the Plaintiff's

cause of action was cognizable under Sec. 510 of ERISA, 29 U.S.C. Sec. 1140, and thus federal law preempted any state or common law remedies. The Superior Court reversed, *Nobers v. Crucible*, 376 Pa. Super. 156., 545 A.2d 367 (1988). Alloctur was denied by the Pennsylvania Supreme Court.

Despite the appellate state court rulings, the Defendants again went before the federal district court. They asserted removal was not proper in light of recent United States Supreme Court decisions. The district court found that removal was untimely and the petition for mandamus from the Third circuit was denied. *Crucible, Inc. v. Zeigler*, 908 F.2d 962 (3d Cir. 1990).

Thus, having travelled a long and winding road, the question of jurisdiction is once more before us. Before we begin our discussion of our grant of Defendants' motion for judgment on the pleadings, we must mention adjunct litigation which impacts the instant case.

In 1990, the employee benefit plans of Colt and Crucible instituted an action in federal court in an effort to have an injunction imposed under the Anti-Injunction Act, 28 U.S.C. Sec. 2283. In this suit, *1975 Salaried Retirement Plan v. Nobers*, the plaintiff asserted tht "Nobers II" would compromise the carrying out of their duties promulgated by the ERISA statute and that the litigation "relates to" the provisions of ERISA and is therefore subjected to the jurisdiction of the federal courts.

Thus the plans sought the imposition of the Anti-Injunction Act, an act which preents a federal court from staying proceedings taking place ina state court except in three limited circumstances:

Appendix D

> Stay of State court proceedings
> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. Sec. 2283.

The argument of the plans was that its claims are applicable to all three exceptions. The plans alleged that certain provisions of ERISA gave express authority to impose injunctions for failure to comply with the mandates of the statute, including the supersedure provisions. It also claimed that the injunction was necessary to establish proper jurisdiction. The district court, however, disagreed and this decision was affirmed by the Third Circuit, *1975 Salaried Retirement Plan v. Nobers*, 968 F.2d 401 (1992). The plans appealed, but certiorari was denied by the Supreme Court.

The opinion of the Third Circuit in that case is especially important for our purposes, as the court in denying the injunction first had to address the issue of whether the ERISA statute compelled preemption. If preemption was warranted, then proper jurisdiction would be under the auspices of a federal court.

The Third circuit found in interpreting the second exception to the Anti-Injunction Act, "where necessary in aid of its jurisdiction," 28 U.S.C. Sec. 2283, it first had to determine whether the federal courts had exclusive jurisdiction over the claims in "Nobers II."

Appendix D

In its opinion, the Third Circuit affirmed the decision of the district court in refusing to issue an injunction. However, it also stated that this case, Nobers II, "relates to" an ERISA plan and thus preemption is not only appropriate, but mandated according to Section 514 (a), U.S.C. Sec.1144 (a). [That statute states that under subchapters II and III of ERISA, any controversy involving the statute "shall supercede any and all State laws insofar as they may now or hereafter relate to any [ERISA-covered[employee benefit plan. . . ." 29 U.S.C. Sec.1144 (a) (1988).]

The Third Circuit spoke clearly on the issue of the proper jurisdiction of the case sub judice.

> In sum, the Pennsylvania court's assumption of jurisdiction over Nobers II is in violation of ERISA's supersedure provisions, but an injunction does not lie simply because of that fact. Instead, we must assume that the state courts will faithfully follow federal law. On that score, we note that the preemption issue here was not definitively resolved until Ingersoll-Rand, which was decided after the Pennsylvania Superior Court had ruled that Nobers II was not preempted. Perhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding. If not, then theproper avenue of redress is appeal through the state court system, and ultimately, if necessary, to the United States Supreme Court. See Atlantic Coast Line, 398 U.S. at 287, 90 S. Ct. at 1743.

Appendix D

1975 Salaried Retirment Plan v. Nobers, supra.

If the Third Circuit Court were the only federal authority on this issue of jurisdiction, we would be required to follow it. Our Pennsylvania Supreme Court has stated:

> While recognizing that in cases involving federal questions the Supreme court of the United States is ultimate arbiter, inview of the wide spread confusion in this area of the law and the failure of the Supreme Court to clarify it, *the decision of theThird Circuit Court ofAppeals in on this mattter, for all practical purposes, the ultimate forum inPennsylvania.* (emphasis profided)

Commonwealth v. Negri, 491 Pa. 117,122 (1965); *Schreiber v. Republic Intermodal Corp.*, 473 Pa. 614, 620 (1977).

In holding that Nobers II "relates to" an ERISA plan, the Third Circuit relied on *Ingersoll-Rand Corp. v. McClendon*, 498 U.S. 133, SD. Ct. 78, 112 L. Ed. 2d 474 (1990). In that case, Justice O'Connor authored an opinion which emphasized that application of the statute was not tobe construed or applied narrowly.

> The key to Sec.514(e) is found in the words "relate to." Congress used those words in their broad sense, rejecting more limited preemption language that would have made the clause applicable only to stat laws relating to the specific subjects covered by ERISAÆ ... Moreover, to underscore its intent thta Sec.

> 514(a) be expansively applied, Congress used equally broad language in defining the 'state law' that would be pre-empted. Such laws or other State action having the effect of law.' Sec. 514(a)(1), 29 U.S.C.Sec.1144(c)(1).

Ingersoll-Rand v. McClendon, supra.

In Ingersoll-Rand, a former employee instituted a wrongful discharge action, claiming he was fired so that his employer would not have to contribute to his pension. In finding that the common law claims for which the Plaintiff sought remedies were preempted by the existence of the ERISA statute, the Supreme Court held,

> Here the existence of a pension plan is a critical factor in establishing liability under the State's wrongful discharge law. As a result, this cause of action relates not merely to pension benefits, but to the essence of the pension plan itself. We have no difficulty in concluding that the cause of action which the Texas Supreme court recognized here ... 'relate[s] to' and ERISA-covered plan within the meaning of Sec.514(a), and is therefore pre-empted. (emphasis in the original)

Ingersoll-Rand v. McClendon, supra.

Thus, in following the mandate of *Ingersoll Rand*, theThird Circuit found that preemption was equally applicable in the case now before us because the entire cause of action is predicted upon whether the Plaintiffs are entitled to certain benefits or the value

of certain benefits. The holding is undeniably clear:

> *Ingersoll-Rand* controls the preemption question in this case. The plans are certainly correct that the claim in Nobers IIdepends on the existence of an ERISA plan. If an ERISA plan did not exist, theappellees would never have brought Nobers II ... In sum, Nobers II relates to' and ERISA plan and is accordingly preempted by ERISA section t14 (a), 29 U.S.C.Sec. 1144(a).

1975 Retirement Plan v. Nobers, supra.

As stated previously, we are certainly cognizant that when we granted summary judgment on this issue in 1987, the Superior court did not have the benefit of either of the cases which now amplify the interpretation and application of the phrase "relates to" when determining if ERISA is to preempt a common law or other available remedy.

Judgment on the pleadings is appropriate only where no material facts are in dispute. *Pennsylvania Association of State Mental Hospital Physicians, Inc. v. State Employee Retirement Board*, 399 A.2d 93, 484 Pa. 313 91979). To succeed on a motion for judgment on the pleadings, the moving party's right to prevail must be so clear that trial would clearly be a fruitless exercise. *Keil v. Good*, 356 A.2d 768, 467 Pa. 317 (1976).

Thus it is with the guidance provided us in Ingersoll-Rand and 1975 Retirement Plans and the unequivocal mandate of those cases on the issue of jurisdiction that we conclude this court does not have the requisite jurisdiction necessary to entertain the

controversy now before us, as Sec. 51(a) of ERISA, 29 U.S.C.Sec. 1144(a) compels that any applicable state law or other State action having the effect of law is preempted. We are therefore required to grant the Defendant's motion for judgment on the pleading pursuant to Pa. R.C.P. 1034 and enter the attached order.

s/ Joseph Walko
J.